

REMARKS

Applicants respectfully request reconsideration of this application, and reconsideration of the Office Action dated December 19, 2003. Upon entry of this Amendment, claims 5, 9-26, 28, and 29 will remain pending in this application with claims 10, 11, 13-26, 28, and 29 having been withdrawn. Claims 1-4, 6-8 and 27 are canceled by this Amendment and new claims 30-52 are added. The amendments to the claims are supported by the specification and original claims. The newly added claims are also supported by the specification. For example, newly added claims 29-31 are supported at page 6, paras. [0020] to [0022]; claims 34 finds support in the Sequence Listing; claims 38, 43, and 44 find support at page 3, para. [0011]; claims 45-48 finds support at page 5, paras. [0016]-[0017]; and claims 50-52 find support at page 7, para. [0027]. No new matter is incorporated by this Amendment. Moreover, payment to cover the fees associated with the additional claims, including the new multiple dependent claims, is also submitted herewith.

Applicants note the Examiner's comments with respect to the priority document and the Nagakawa documents. Applicants submit herewith a certified translation of priority document appln. no. 100 47 865.4.

* * * * *

The abstract is objected to for purportedly not completely describing the disclosed subject matter. In response, Applicants submit herewith a new Abstract of the Disclosure which includes the information suggested by the Examiner.

The specification has been amended by updating application serial no. 09/396,478 as suggested by the Examiner. In addition, the specification has also been amended to clarify example 3. However, Applicants note that after integration of the vector described in the example into the chromosome, the vector allows for attenuated expression of the

dead gene. Hence, the objections to the specification are overcome and withdrawal of each objection is requested.

* * *

Claims 5 and 9 are objected to for depending from rejected claims. In response, claims 5 and 9 have been rewritten in independent form and are thus believed to be on condition for allowance. Hence, withdrawal of the objection is requested.

* * *

Claims 1-4, 6-8 and 27 are rejected under 35 U.S.C. §112, second paragraph, as indefinite. Claims 1-4, 6-8 and 27 have been cancelled by this Amendment rendering this rejection moot. Accordingly, reconsideration and withdrawal of the rejection are requested.

* * *

Claims 1-4, 6-8 and 27 are rejected under 35 U.S.C. §112, first paragraph, as lacking written description.

Claims 1-4, 6-8 and 27 are rejected under 35 U.S.C. §112, first paragraph, as not being fully enabled by the specification.

As noted above, claims 1-4, 6-8 and 27 are cancelled, thereby rendering each of the above rejections moot.

* * *

Claim 12 is rejected under 35 U.S.C. §112, first paragraph, as containing subject matter that is purportedly not enabled by the specification. The Office Action asserts that the specification fails to fully comply with the requirements for deposited microorganisms. Applicants respectfully traverse.

The specification contains the accession number, a brief description of the deposit, and the name of the depository and states that the deposit has been accepted for deposit under the Budapest Treaty. *See page 19, paragraph [0062]*. The specification has also been amended to include the complete depository address. All restriction on the availability to the public of the material so deposited will be irrevocably removed upon the granting of a patent. The above remarks overcome this rejection. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

* * *

Claims 1-4, 6-8 and 27 are rejected under 35 U.S.C. §102(a) as anticipated by Nakagawa et al. (EP 1108790).

Claims 1-4, 6-8 and 27 are also rejected under 35 U.S.C. §102(a) as anticipated by Nakagawa et al. (U.S. Pat. Appln. No. 2002/0197605).

Claims 1-3 and 6-8 are rejected under 35 U.S.C. §102(b) as anticipated by Cole et al. (GenBank Acc. Z77137).

Claims 1-4, 6-8, and 27 have been canceled by this Amendment thereby rendering each of these rejections moot.


* * * * *

Applicants respectfully submit that this Amendment and the above remarks obviate the outstanding objections and rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

If any fees under 37 C.F.R. §§ 1.16 or 1.17 are due in connection with this filing, please charge the fees to Deposit Account No. 02-4300; Order No. 032301.230.

If an extension of time under 37 C.F.R. §1.136 is necessary that is not accounted for in the papers filed herewith, such an extension is requested. The extension fee should be charged to Deposit Account No. 02-4300; Order No. 032301.230.

Respectfully submitted,
SMITH, GAMBRELL & RUSSELL, LLP

By: 
Robert G. Weilacher, Reg. No. 20,531
1850 M Street, N.W., Suite 800
Washington, D.C. 20036
Telephone: (202) 263-4300
Facsimile: (202) 263-4329

Dated: March 18, 2004
RGW/BLN